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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]

Office: Dallas

Date: **JAN 08 2003**

IN RE: Applicant: [REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the
Immigration and Nationality Act, 8 U.S.C. § 1431

IN BEHALF OF APPLICANT: Self-represented

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Dallas, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on November 9, 1981, in Mexico. The applicant's father, [REDACTED], was born in Mexico in September 1961 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in Mexico in June 1960 and became a naturalized U.S. citizen on August 5, 1996. The applicant's parents married each other on November 1, 1980. The applicant was lawfully admitted for permanent residence on March, 13, 1997. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431.

The district director reviewed the record and concluded that the applicant was over the age of 18 and ineligible for the benefit sought.

On appeal, the applicant's mother states that she thinks the applicant should qualify based on all the information she has provided. The applicant's mother states that she filed the present application and an application for her daughter at the same time. She states that her daughter received her citizenship certificate last year.

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthday as of February 27, 2001. The applicant was 19 years and 3 months old on February 27, 2001. Therefore, he is not eligible for the benefits of the CCA.

It is noted that the applicant's sister, [REDACTED], was born in April 1986. She was 14 years and 10 months old on February 27, 2001, and eligible for the benefits of the CCA.

Former section 320 of the Act prior to its amendment provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

The applicant does not qualify for consideration under former section 320 of the Act because one of his parents was not a U.S. citizen at the time of his birth.

The applicant also does not qualify under former section 321 of the Act, 8 U.S.C. § 1432, because under section 321 of the Act the applicant had to be residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized. Both of the applicant's parents did not naturalize prior to the applicant's 18th birthday.

8 C.F.R. 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. Therefore, the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over his place of residence.

ORDER: The appeal is dismissed.